IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2769 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BALUBA VISAJI

Versus

VASANTBHAI RAMABHAI PATEL

Appearance:

1. Special Civil Application No. 2769 of 2002

MR JN JADEJA for Petitioner No. 1-7

MR JA ADESHRA for Respondent No. 1

MR DC RAVAL for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 06/08/2002

ORAL JUDGEMENT

1. Rule. Mr.J.A.Adesara, learned Counsel for respondent No.1 and Mr.D.C.Raval, learned Counsel for

respondent No.2 waive service of notice of rule.

2. With the consent of the parties, the matter is taken up for final hearing.

3. The present petition arises against the order dated 9-7-2001 passed by the Gujarat State Cooperative Tribunal in Revision Application No.15/1998 arising from the order passed by the Nominee below Ex.72 in Arbitration Suit No.835/1988.

4. Mr.Jadeja, learned Counsel appearing for the petitioners, has submitted that the main grievance in the present petition is against the typed deposition before the learned Nominee and he has submitted that as a matter of fact, the deposition by way of examination in chief or otherwise has not taken place before the learned Nominee and the deposition on affidavit is submitted, which includes documents, as if there were accepted by the Nominee by exhibiting them as produced on record. Mr.Jadeja submitted that such practice is unknown to the law and the normal practice for the trial would be to record the deposition on oath and to allow the defendant to cross-examine the witness and such procedure can only be said to be the evidence in the eye of law. Mr.Jadeja submitted that after such typed deposition was accepted, the application for adjournment was submitted and it was rejected and thereafter the right to defence is rejected. Mr.Jadeja submitted that the petitioners are agreeable if the matter is directed to be considered by the learned Nominee after recording the deposition by way of examination in chief and after giving opportunity to the petitioners, who are defendants therein to cross-examine the witness of the original plaintiff.

5. On behalf of respondent No.1 herein, who is the original plaintiff in the suit, it has been contended by Mr.Adesara that the petitioners are trying to delay the proceedings of the suit and he submitted that the deposition was submitted on affidavit and, thereafter number of applications have been made for the purpose of seeking adjournments. Mr.Adesara submitted that as a matter of fact, the petitioners herein are interested in delaying the proceedings of the suit before the Nominee for one reason or the other and, therefore, there is no bonafide intention on the part of the petitioners. Mr.Adesara also submitted that the plaintiff, respondent No.1 herein had submitted the deposition on affidavit, but respondent No.1 has no objection in recording of the deposition in the presence of the Board of Nominees. Mr.Adesara also submitted that since the father of the

original plaintiff has met with a paralytic attack, it may be that the application may be required to be made to the Nominee for recording of the evidence by appointing a Commissioner, otherwise the plaintiff has no objection in deposition in presence of the authorised person and he also has no objection if opportunity of cross-examination of the witness is given to the petitioners herein, defendants in the suit. Mr.Adesara lastly submitted that since the suit is of 1988, the anxiety on the part of the respondent No.1 is if the suit is disposed of as early as possible and the original defendants who are petitioners herein may not apply dilatory tactics and time bound programme may be given to protect the interest of the respondents and reasonable cost be awarded also. Mr.Jadeja agrees to proceed with the disposal of suit with time bound programme and also for awarding of cost of Rs.2,500/- to respondent No.1 for litigation.

6. Considering the above, it appears that the recording of the evidence by way of typed deposition accepted by the Nominee, more particularly when it is objected by the defendants cannot be said to be justified, but at the same time, I am of the view that since both the sides have agreed for examination of the witness of the plaintiff on oath before the Nominee or before the Commissioner, who may be appointed by the Nominee in accordance with law for recording of the evidence and the petitioners, will have the opportunity to examine the witness. Therefore, considering the overall facts and circumstances of the case and in view of the concession given by both the sides, I find it proper to give following directions, which In my view, would meet with the ends of justice.

6.1 The learned Nominee shall proceed with the lavad suit No.835/1988 from the stage of recording of the fresh deposition of the plaintiff or his witness in accordance with law and such deposition shall be recorded before him or before any persons who may be authorised by him in accordance with law. The petitioner herein will have a right to cross-examine the said witness, whose deposition is recorded.

6.2 After the aforesaid procedure, the suit shall be tried further in accordance with law and shall be completed as early as possible, preferably within a period of six months from the date of receipt of order of this Court.

6.3 In view of the aforesaid order passed, the order

passed by the Tribunal as well as by the learned Nominee below application Ex.72 would not operate and shall stand substituted by the present order.

6.4 The petitioner shall pay a sum of Rs.2,500/towards the cost of the litigation before this Court as well as before the Tribunal. It will be paid within one month from today.

7. The petition is allowed in terms of the above directions. Rule is made absolute to the aforesaid extent.

6-8-2002 (Jayant Patel, J.)

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